

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Reallocation of Television Channels) ET Docket 97-157
60-69, the 746-806 MHz Band)

To: The Commission

**OPPOSITION OF APCO
TO PETITIONS FOR RECONSIDERATION**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby submits the following Opposition to petitions filed by Lindsay Television, Inc. and Achernar Broadcasting Company ("Joint Petitioners"), ValuVision International, Inc. ("ValuVision"), Latin Communications Group Television, Inc. and Los Cerezos Television Company ("Latin"), and Davis Television Fairmont, LLC ("Davis"), seeking reconsideration of the Commission's Report and Order, FCC 97-421, released January 6, 1998, in the above-captioned proceeding, 63 Fed. Reg. 6669 (February 10, 1998).

APCO is the nation's oldest and largest public safety communications organization. Most of its 13,000 individual members are state or local government officials involved in the management, design, and operation of police, fire, emergency medical, local government, highway maintenance, forestry conservation, disaster relief, and other public safety communications systems. APCO is the FCC's certified frequency

coordinator for 80% of land mobile channels allocated for public safety use, and is the sole coordinator for public safety channels in the 800 MHz bands.

Section 3004 of the Balanced Budget Act of 1997 required the Commission to reallocate 24 MHz from the 746-806 MHz band (TV channels 60-69) for public safety services no later than January 1, 1998. Pub.L.No. 105-33, 111 Stat. 251 §3004 (1997). The Act also required the Commission to “commence licensing” of the new public safety spectrum by September 28, 1998. In the Report and Order, the Commission took the first step towards meeting these statutory obligations, by reallocating for public safety use 764-776 MHz and 794-806 MHz, which correspond to television channels 63, 64, 68, and 69.

The Commission also took several necessary actions in the Report and Order to ensure that the newly allocated spectrum will be made available as quickly as possible for public safety, and to minimize the extent to which the band is encumbered by broadcast use. First, the Commission maintained the secondary status of low power television (“LPTV”) stations in channels 60-69 *vis`a vis* new users of the band, especially public safety users. Second, the Commission dismissed pending applications for new broadcast stations on channels 63, 64, 68, or 69, while permitting applicants to amend their applications to request alternative channels below channel 60. The petitions for reconsideration challenge these aspects of the Commission’s Report and Order.

Latin, an LPTV licensee on Channel 63 in Orlando (on frequencies reallocated for public safety), and Channel 61, Tampa (on frequencies reallocated for commercial services), argues that LPTV stations should be protected against interference from new users of the 746-806 MHz band until 2006, the scheduled end of the DTV transition period. However, Latin’s arguments apply, if at all, only to those channel 60-69

frequencies being reallocated for commercial services. For example, Latin argues that the auctions for the commercial 746-806 MHz spectrum will not even commence until 2001, and that no harm would occur if LPTV stations retain primary status until 2006. Yet, that argument, even if valid, does not apply to new public safety spectrum, licensing for which must “commence” by September 30, of this year. Latin also argues that the Commission failed to balance the public benefits of LPTV against the entirely unknown benefits of new commercial services. However, Latin does not even attempt to suggest that LPTV operations are more important than public safety communications. Latin’s petition should be dismissed, therefore, at least insofar as it relates to channels reallocated for public safety.

ValuVision, Davis, and the Joint Petitioners challenge the Commission’s dismissal of their pending applications for new broadcast stations on channels 60-69. They claim that because Congress contemplated that public safety users would need to “co-exist” in the new spectrum with existing television broadcasters during the transition, there is no reason not to grant pending applications for new TV channels in the band. However, while Congress and the FCC recognized that there is little that can be done in the short run regarding existing television stations, there is nothing to suggest that Congress intended that entirely new analog stations be permitted in the band. Adding such stations would block critical public safety use of the newly reallocated spectrum, undermining the Congressional goal of providing spectrum to address immediate public safety spectrum requirements.

The only support offered for a contrary interpretation is the Joint Petitioners’ reference to a statement in the Conference Report that the Commission is expected to

“ensure that public safety service licensees continue to operate free of interference from any new commercial licensees.” See Joint Petition at 5. However, “new commercial licensees” in that context clearly means new commercial users of the 36 MHz to be assigned through auctions, not new analog broadcast stations in the 24 MHz allocated for public safety (which, in any event, would not necessarily be “commercial”).

The Joint Petitioners also argue that granting the pending applications for channels 63, 64, 68, and 69, would not have a significant negative impact on public safety communications, suggesting that the relevant communities with pending applications are fairly small and do not have significant shortages of public safety spectrum. The reality is quite different, however. First, some of the relevant communities are in fact in or near significant metropolitan areas, such as Kansas City (68), Jacksonville (Palatikin, 63), Washington, D.C. (Fredricksburg, 69), Nashville (Tullahoma, 64), Richmond (63), Des Moines (69), and Tulsa (63).¹ Second, while spectrum congestion is certainly worse in metropolitan areas, there are also shortages of spectrum in many less densely populated areas. Third, a likely use of the new spectrum is for state-wide or region-wide systems that cover both urban and rural areas. Thus, a new television station on a channel 63, 64, 68, or 69, even in a small town, could block use of public safety spectrum for a wide area radio system. Some of the affected states would include Virginia, Illinois, Florida Iowa, Kentucky, Missouri, Kansas, Indiana, , and Oklahoma. Fourth, certain frequencies within the new spectrum are expected to be designated as interoperability channels for use in major emergencies, which are just as likely to occur in sparsely populated areas and in

¹ When adjacent channel television applications (62, 65, and 67) are included, potentially impacted metropolitan areas include Buffalo (Arcade, 62), New Orleans (Hammond, 62), Seattle (62 and 67, Olympia), and Winston-Salem/Greensboro (High Point, 67).

major cities. Therefore, allowing new television stations on channels 63, 64, 68, and 69, would in fact have a serious negative impact on public safety communication.

Finally, the Commission's legal authority to dismiss pending applications to accommodate the reallocation of channels 60-69 is unchallenged. In a similar case where television spectrum was reallocated for public safety use, the Commission recognized that the Communications Act

does not preclude the Commission from utilizing rulemakings for the orderly conduct of its business and from denying applications inconsistent with any rules ultimately adopted. United States v. Storer, 351 U.S. 192 (1956). Moreover, applicants unlike licensees, are not protected by Section 316. . . . Finally, even existing licensees can be displaced as a consequence of spectrum reallocations. See, e.g., Direct Broadcast Satellites, 740 F.2d 1190, 1209 (D.C. Cir. 1984). Certainly, mere applicants cannot expect greater protection. Cf. Multi-State Communications, Inc. v. FCC, 728 F.2d 1519, 1526 n. 12 (D.C. Cir. 1984).

Amendment of Parts 2, 73, and 90 of the Commission's Rules and Regulations to Allocate Additional Channels in the Band 470 - 512 MHz for Public Safety and Other Land Mobile Services, 59 RR 2d 910, 917-18 (1986) (footnotes omitted). The Commission continued with a statement that is equally true in this case: "When, as in this instance, the public interest requires reallocating spectrum for different uses, that interest must take precedence over the private interests of existing applicants." Id. at 918.

CONCLUSION

Therefore, for the reasons stated above, the Commission should promptly dismiss the petitions for reconsideration submitted in this proceeding.

Respectfully submitted,

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April 6, 1998

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CERTIFICATE OF SERVICE

I, Jane Nauman, hereby certify that copies of the foregoing Opposition of APCO to Petitions for Reconsideration were sent on this 6th day of April, 1998, via U.S. Mail, postage prepaid, to the following individuals at the addresses listed below:

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